

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.19578 of 2007

ORDER:

The present Writ Petition came to be filed seeking issuance of Writ of Mandamus declaring the orders passed by the 2nd respondent in Proceedings R.C.No.A2/188/APSC/2006 dated 02.08.2007 dismissing the petitioner from service under clause 25(i) of Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for short "Rules") as arbitrary, illegal and consequently to declare the petitioner as entitled to continue in service without any break with all consequential attendant benefits.

2) The facts in issue are as under:-

On 09.09.2001, the Anti Corruption Bureau authorities of Vijayawada Range laid a trap against the petitioner, when he demanded and accepted a bribe of Rs.3,000/- from the contractor by name Mr. M.Venkata Reddy, to process the part final bill for the construction of Jasuva Kalapranaganam at Vinukonda of Guntur District. Initially the petitioner was placed under suspension by the 2nd respondent. Against the order of suspension, the petitioner preferred Writ Petition No.5574 of 2002. The said Writ Petition was allowed stating that the order of second respondent in placing the petitioner under suspension not to do so and accordingly he was reinstated on 30.09.2002. Thereafter, a charge-sheet was filed

before the Special Judge for SPE & ACB Cases, Vijayawada. After a fullfledged trial, the trial court convicted the accused and sentenced him to undergo rigorous imprisonment for a period of two years and also to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for a period of 3 months for the offence under Section 7 of Prevention of Corruption Act. Challenging the same, the petitioner preferred Criminal Appeal No.308 of 2007 before this Hon'ble Court. At the time of admission, this Court suspended the sentence of imprisonment imposed on the appellant/accused pending disposal of CrI.A.No.308 of 2007. By an order dated 02.08.2007, the Vice Chairman and Managing Director, Andhra Pradesh Scheduled Cooperative Castes Finance Corporation Limited, Hyderabad, passed the impugned proceedings, dismissed the petitioner, from service on the ground of mis-conduct, as per Rule 25(i) of the A.P. (CCA) Rules, 1991. Challenging the same, the present Writ Petition is filed.

3) The main ground of attack is that the direction given by the first respondent to the second respondent, seeking removal of the petitioner from service, on the ground that the petitioner has been convicted in a criminal case and the second respondent acting on the same is illegal and improper.

4) The second ground urged by the learned counsel for the petitioner that once the sentence of imprisonment has been

suspended, the authorities could not have dismissed the petitioner from service. It is further urged that since the petitioner was an employee of District Scheduled Caste Services Cooperative Society Limited, Guntur, the provisions of A.P.Civil Services (CCA) Rules do not apply and the authorities ought to have dealt the case under the provisions of the Cooperative Societies Act. Relying upon the judgment of the Apex Court, the learned counsel for the petitioner mainly submits that once the petitioner is found guilty of misconduct of criminal charge, he cannot be dismissed from service automatically and that the disciplinary authority ought to have considered all the facts and circumstances before passing the order.

5) By an order dated 14.09.2007 this Court granted interim suspension of the impugned order dated 02.08.2007 until further orders.

6) A counter came to be filed disputing the averments made in the affidavit filed in support of the writ petition. It is the case of the Corporation that having regard to the conviction given by a competent criminal court finding the petitioner guilty of misconduct, the respondent/authority was justified in dismissing the petitioner from service. It is urged that second respondent being the appointing, is competent to initiate disciplinary proceedings against the petitioner. Therefore, in exercise of his power and after perusing

the entire record, the second respondent passed the impugned order. It is contended that though the wordings in the said order read as if the second respondent followed the instructions of the 1st respondent but a reading of the entire show that the second respondent has applied his mind to the facts in issue and independently passed the order. It is further urged that since the dismissal is under Rule 25(i) of the Rules, no notice is to be issued to the petitioner. It is further stated that since the conviction is not suspended, the petitioner has no right to seek reinstatement on the ground that his sentence has been suspended. It is further urged that the services of the petitioner are governed by A.P. Scheduled Castes Cooperative Finance Corporation Limited and the District Scheduled Castes Service Cooperative Engineering Rules, which were approved by a Committee. The said rules were framed and made applicable to all the technical staff in Engineering. It is said that as per the amended Rule 14 of the Engineering Service Rules and the bye-laws of the Corporation, the A.P. Civil Services (CCA) Rules, 1991 are included under Rule 14 of the Engineering Service Rules, as per the approval of 38th Committee held on 31.04.2004. Therefore, the argument that A.P. Civil Services (CCA) Rules have no application, are incorrect.

7) The question that arises for consideration is "Whether the disciplinary authority was justified in dismissing the petitioner from service?"

8) Insofar as the argument of the learned counsel for the petitioner that pending Criminal Appeal, the respondent could not have dismissed the petitioner from service, cannot be accepted. It is to be noted that while admitting the appeal, this Hon'ble Court only suspended the sentence. The Hon'ble High Court has neither suspended the conviction nor the judgment. Therefore, the plea of the petitioner that the action taken by the respondent/Corporation is illegal and improper cannot be accepted.

9) Issue identical to the case on hand came up for consideration before the Apex Court in **Government of Andhra Pradesh and another v. B.Jagjeevan Rao**¹. Dealing with the same, the Apex Court held as under :-

"6. It is not in dispute that the Respondent was convicted by the Principal Special Judge for SPE & ACB Cases for the offences punishable under the Act. The High Court, as the order would reflect, had only directed suspension of sentence. There was no order of stay of conviction. It is well settled in law that there is a distinction between suspension of sentence and stay of conviction. This has been succinctly stated in *Rama Narang v. Ramesh Narang* : (1995) 2 SCC 513:

7.....'15.. Section 389(1) empowers the Appellate Court to order that the execution of the sentence or order appealed against be suspended pending the appeal. What can be suspended under this provision is the execution of the sentence or the execution of the order. Does 'Order' in Section 389(1) empowers the Appellate Court to order that the execution of the sentence or order appealed against be suspended pending the appeal. What can be suspended under this provision is the execution of the sentence or the execution of the order. Does 'Order' in -Section 389(1) mean order of conviction or an order similar to the one

¹ (2014) 13 Supreme Court Cases 239

Under Sections 357 or 360 or the Code? Obviously, the order referred to in Section 389(1) must be an order capable in execution. An order of conviction by itself is not capable of execution under the Code. It is the order of sentence or an order awarding compensation or imposing fine or release on probation which are capable of execution and which if not suspended, would be required to be executed by the authorities.

16. In certain situations the order of conviction can be executable, in the sense, it may incur a disqualification as in the instant case. In such a case the power Under Section 389(1) of the Code would be invoked, in such situations, the attention of the Appellate Court must be specifically invited to the consequence that is likely to fall to enable it to apply its mind to the issue since Under Section 389(1) it is under an obligation to support its order 'for reasons to be recorded by it in writing'. If the attention of the Court is not invited to this specific consequence which is likely to fall upon conviction how can it be expected to assign reasons relevant thereto?... If such, a precise request was made to the Court pointing out the consequences likely to fall on the continuance of the conviction order, the Court would have applied its mind to the specific question and if it thought that case was made out for grant of interim stay of the conviction order, with or without conditions attached thereto, it may have granted an order to that effect." (Rama Narang v. Ramesh Narang (1995)2 SCC 513)

10) At this stage, it is also to be noted that though the petitioner was reinstated into service pursuant to the interim order passed by the Court and though all the benefits, which he was entitled to after his conviction were paid, but subsequently the another order came to be passed on 26.03.2011 dismissing the petitioner from service, in view of the judgment of the Division Bench of this Court in W.P.8000 of 2009 and batch. The relevant portion of the order is as under :-

"The above said selective treatment by the state/disciplinary authority would therefore be contrary to public interest apart from violative of law declared

by the Supreme court. We, therefore, strongly deprecate such discriminatory and selective treatment and direct the state/disciplinary authority to review all such cases where the Government servants have suffered conviction and even if appeals or revisions against the conviction are pending in the light of this decision and take appropriate corrective action and file compliance report before this Hon'ble Court within six months from the date of receipt of the copy of this order."

11) The said order is not challenged by the writ petitioner. Therefore, even if the present impugned order is set-aside, the petitioner will not get any benefit.

12) The short question that falls for consideration is "Whether the authority was justified in removing the petitioner from service in the year 2007?"

13) The impugned order was passed by the Managing Director, A.P. Educational Welfare structure Development Corporation, uninfluenced by any of the higher authorities. As stated earlier, the learned counsel for the petitioner mainly contended that the authorities erred in invoking the provisions of C.C.A. rules while placing the petitioner under suspension. It is the case of the respondent/corporation, that the Corporation has framed its own rules and in rule 20 of the said rules, the corporation has made provision for applicability of the CCA Rules, 1991 and other general rules. Therefore, the argument of the learned counsel for the petitioner that CCA rules will not apply cannot be accepted. Even otherwise, Article 311 of the Constitution of India permits the

authority to dismiss or remove or reduce in rank on the ground of conduct which has led to his conviction on a criminal charge. Therefore, the petitioner cannot claim any equities under the guise of non-applicability of CCA Rules or wrong reference to the rule provision.

14) Though the impugned order contains a reference made by the first respondent to the second respondent seeking dismissal of the petitioner from service, but a reading of the order as a whole show that the said order came to be passed after considering the entire material on record. In my view a stray sentence, need not invalidate the entire proceedings as the said order clearly reveal that the second respondent acted independently showing application of mind to the fact situation.

15) Learned counsel for the petitioner relied upon a judgment of this Court in **D.Ramesh Sinha v. Cadre Authority for Key Personnel of Co-operative Central Banks/Apex Bank, Hyderabad**² in support of the proposition that any order passed pursuant to the directions issued by the State Government to initiate disciplinary proceedings, against an employee or placing under suspension, is illegal and improper. The facts in the said case are totally different. It was a case where the matter was placed before the Managing Director of

² 2002 Supplement (2) ALD 687 (DB)

APCOB., who asked for factual note to be placed before him. The note prepared by the authorities was placed before the Managing Director, who agreed with the suggestions made in the note. The same was found fault with stating that the Managing Director could not have accepted, the note file endorsements prepared by the Government authorities. Situation on hand is different. It is a case, where a person is convicted by criminal court for acts of misconduct and in the appeal filed against the said judgment there was no suspension of either conviction or judgment. In the situation like this, the authorities have got power to terminate the services not only under Article 311 of the Constitution of India but also under the rules framed by the society. At this stage, it would be useful to extract Rule 25(1) of A.P. Civil Services (Classification, Control and Appeal) Rules, 1991, which is as under :-

"9. Having stated the principle, we shall now advert to the rule position. Rule 25(1) being relevant is reproduced below:

'25. Special Procedure in certain cases:- Notwithstanding anything contained in Rule 20 to Rule 24-

(1) where any penalty imposed on a government servant on the ground of conduct which has led to his conviction on a criminal charge,

The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit.'

Dealing with the same, the Apex Court in Jagjeevan Rao's case held as under :-

""The requirement of the said Rule, as it seems, is that the conduct of government servant that had led to conviction on the criminal charge and the circumstances of the case are to be considered by the disciplinary authority before imposing the appropriate punishment.

10. In the case at hand, the Respondent was convicted Under Section 7 and 13(1)(d) read with Section 13(2) of the Act and sentenced to one year rigorous imprisonment. In almost similar case in *S. Nagoor Meera (supra)*, a two -Judge Bench, after referring to the conceptual mandate of Article 311(2) and after referring to the dictum in *Shankar Dass v. Union of India : (1985) 2 SCC 358* has expressed thus:

'10. What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. Now, in this case, the Respondent has been found guilty of corruption by a criminal court. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated above, if he succeeds in appeal or other proceeding, the matter can always be reviewed in such a manner that he suffers no prejudice'.""

16) It may also be noted that in a case of this nature even if the bye law is said to be silent and the CCA Rules have no application, Article 311(2)(a) gives ample power to the second respondent to pass the impugned order.

17) As stated earlier, subsequent to the interim stay granted by this Court the petitioner was reinstated, paid all the retirement benefits upto the year 2011 and thereafter he was again terminated basing on the judgment of the Division Bench. The said order of termination made in the year 2011 is not challenged till date. Viewed from both the angles, this Court does not find any merit in this writ Petition and the same is liable to be dismissed.

18) Accordingly, the Writ Petition is dismissed. No costs.

Miscellaneous Petitions pending if any in this Writ Petition, shall stand closed.

C. PRAVEEN KUMAR, J

Dt:18.04.2017
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